REMARKS/ARGUMENTS

Status of the Application

Claims 1-21 are pending:

- Claim 16 stands objected to as containing a limitation identical to its parent claim 14.

- Claims 18 and 20 stand rejected under 35 USC 112, first paragraph as failing to comply with the written description requirement.

- Claims 1-5, 9, and 11-16 stand rejected under 35 USC 102(b) as anticipated by Cluts.

- Claim 6-8 and 17-20 stand rejected under 35 USC 103(a) as obvious over Cluts in view of Dunning.

- Claim 10 is objected to as depending from a rejected base claim. The Examiner is thanked for the indication that claim 10 is otherwise directed to allowable subject matter.

- Independent claim 21 is newly added.

The Examiner is thanked for the careful examination of the present application, and particularly the Response to Arguments section of the Office Action. While Applicant respectfully traverses the conclusions set forth therein, it is believed that the discussion facilitates a clear discussion of the issues for consideration in the present application.

Objection to Claim 16

Claim 16 has been cancelled.

35 USC 112, 1 Rejection of Claims 18 and 20

The 35 USC 112, first paragraph rejection of **claims 18 and 20** is respectfully traversed.

These claims require that the mode of operation of a skip means be selected from a group consisting of frequency of skip means operation and duration of skip means operation. It is submitted that these claims are amply supported by the application as filed.

The Examiner's attention is directed in particular to the paragraph beginning at Page 3, line 10 of the present application:

> A "default" mode of operation of the skip means, e.g. simply pressing a skip button, invokes the normal function of the skip means, as described above. A slightly deviant mode of operation, however, will remove one or more criteria before invoking the normal skip function . . . Examples of such deviant operations are iterated or prolonged operation, e.g. pressing the skip button a second time shortly after the first time to remove a criterion for an 'artist' attribute, pressing three times to remove criteria for both the 'artist' and 'style' attribute, pressing for one second to remove the criteria for the 'artist', the 'style' and 'genre' attributes, etc.

35 USC 102(b) Rejection of Claims 1-5, 9, and 11-16

Claims 1-5, 9, and 11-16 stand rejected as anticipated by Cluts. It is respectfully submitted, however, that Cluts fails to each and every element of these claims and thus fails to support an anticipation rejection under 35 USC 102.[1]

As amended, independent **claim 1** is directed to a system for browsing information units. The system includes, *inter alia*:

- Presentation means for presenting at least one of the information units via audio or video playback.

- Attribute means for associating a respective one of the information attributes with the attribute value for a plurality of attributes.

- Random selection means for automatically randomly selecting and presenting for playback a unit whose attribute value meets a criterion. The selection and presentation are made without interaction by a user based on the plurality of attributes.

To support the rejection of claim 1, the Office Action points to Cluts col. 18, lines 51-54 as teaching a random selection means for randomly selecting a unit for presentation. As to the selection and presentation being made without interaction by a user, the Office Action asserts that Cluts teaches that the user selects a seed song or initial condition from which the system automatically selects a 'similar' song.[2]

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[1] MPEP 2131.

[2] Office Action at Page 6; as to the latter point, the Office Action also cites to Cluts col. 14 and Figs. 5-11.

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Turning first to the Office Action's reliance on Cluts at col. 18, the Examiner's attention is directed more generally to Cluts Figures 8 and 10 and the accompanying text. As noted by the Office Action, Cluts' step 1020 discloses performing a random sort of the songs identified in an identification step 1015. At step 1025, Cluts picks a number of the identified songs (*i.e.*, the top ten) and lists them as shown in Cluts Figure 8:

FIG. 8
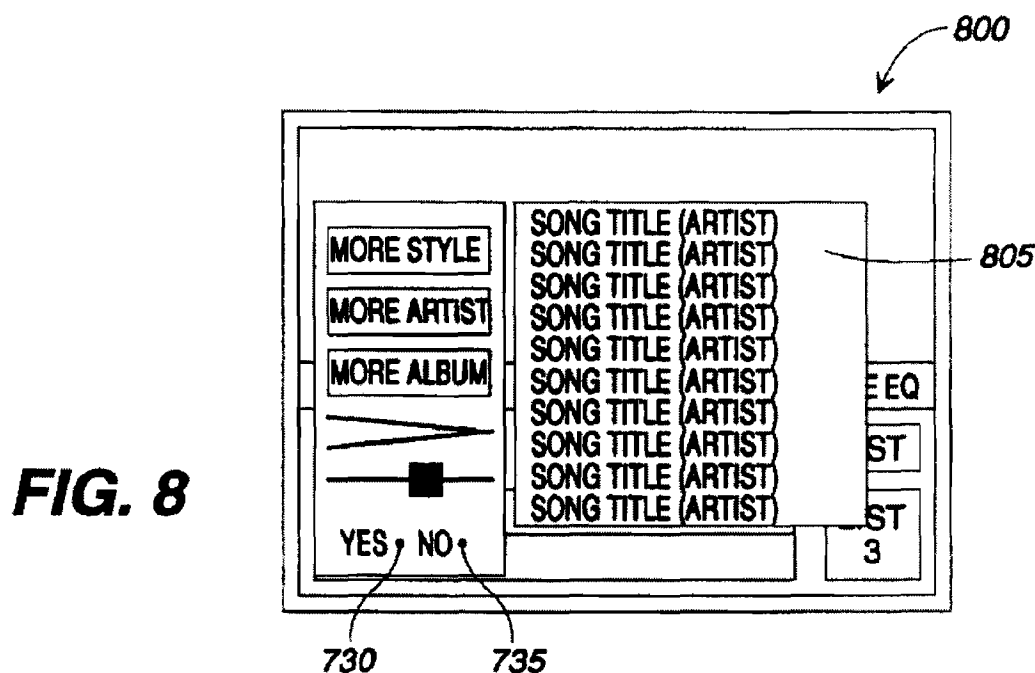
At step 1030, Cluts determines whether the user has pressed the "yes" button to accept songs from the list. If so, the accepted songs are added to a playlist at step 1035. The foregoing is also confirmed at Cluts col. 17, lines 23-39 and Fig. 9, which again teaches that a list of identified songs is presented to the user, who accepts or rejects them at step 930. If accepted by the user, the songs are added to a playlist at step 935.

As described, Cluts thus proposes certain randomly sorted songs for addition to a *playlist*.[3] In contrast, claim 1 is directed to a system in which randomly selected songs are selected and presented for *playback*. Moreover, Cluts requires that the user review and accept the proposed new songs before they are even added to the playlist. Again in

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[3] Cluts defines a playlist as a predetermined collection of songs which can be selected for playback. *See* Cluts col. 4, lines 45; 13, col. lines 38-42.

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contrast to the foregoing, claim 1 requires that the songs be selected and presented for playback without intervention by the user. As Cluts fails to teach at least these claims limitations, withdrawal of the anticipation rejection is thus respectfully requested.

Moreover, claim 1 also requires:

• Attribute means for associating a respective one of the information units with the attribute value for a plurality of attributes.

• That the information units be presented based on the plurality of attributes.

To support the rejection, the Office Action states that Cluts classifies content into a plurality of style categories (1960's, 1970's, British Invasion, etc.) and subcategories (New York City Rap, LA Rap, Male Rap, etc.).[4] The Office Action also emphasizes the associated "weight" value and the "style equalizer" function of Cluts.[5]

It is respectfully submitted, however, that Cluts uses a single attribute – namely a style attribute. In this regard, Cluts teaches that the style attribute is stored in a single style table, which may include any number of style categories associated with any number of artists.[6] Cluts presents a style table for the exemplary case of the Beatles:

Artist: The Beatles	
Style Category	Weight
1960s	1
1970s	1
British Invasion	7
Rock	5
Pop	5
Innovators	6

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[4] *See* Office action at pages 6 and 7.
[5] *See* Office Action Response to Arguments section. While applicant respectfully traverses the Examiner's conclusion, the Examiner is especially thanked for the explanation of the Examiner's reasoning.
[6] Cluts col. 15, lines 26-33; col. 14, lines 39-50.

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Recognizing that the Beatles musical style can be expressed in several ways, the Beatles are assigned to several style values or categories (1960's, British Invasion, etc.). Thus, while Cluts teaches that the style attribute may have multiple values, it does not teach the use of multiple attributes.

The Office action emphasizes Cluts' weight value and style equalizer as teaching multiple attributes. The Office Action states that the weight determines the degree to which a user prefers music that conforms to the specified style.[7] It is respectfully submitted, however, that it is the playlist editor – not the user – that assigns the categories and weights as part of the style table generation process.[8] Thus, the weight value relates to the playlist creator's *a priori* evaluation of an artist's musical style, and not to preferences of the user.

It is also submitted that Cluts' implementation of a weight value cannot fairly be characterized as an additional attribute and in fact supports applicant's position. As acknowledged by the Office Action, Cluts recognizes the difficulties inherent in attempting to classify music according to a subjective attribute such as a style. Not only is the classification inherently subjective, but many artists can colloquially be described as 'tweeners – their music does not fit precisely within any particular style category, the style of their music may change with time, and particular songs or albums may best fit into different style categories.[9] Cluts' weighting scheme thus attempts to remedy a problem which results from the reliance on a single style attribute.

Cluts' weighting scheme is best considered not as an additional attribute, but as a way of describing the single style attribute without introducing still more subjective categories.[10] Thus, in the case of the Beatles, Cluts' exemplary editor has decided to describe the Beatle's style – again, a single attribute -- as something like "a lot like 1960's and 1970's, sort of like rock and pop, innovators but maybe a little less so, with a

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[7] Office Action page 18.
[8] Cluts col. 15, lines 39-50.
[9] *See, e.g.,* Cluts col. 14, lines 13-20; col. 14, line 64 to col. 15, line 8.
[10] Indeed, the "style EQ" function relied on by the Office Action to support the conclusion that Cluts requires that the number of categories be relatively limited (*e.g.,* the 8 buttons on the slider EQ screen).

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tiny bit of British invasion thrown in." This further supports the conclusion that Cluts'
weighting scheme addresses a problem inherent in the use of a single style attribute and
does not constitute an additional attribute.

The Office Action also cites to Cluts' example of rap music subcategories. Cluts
teaches that it may be desirable to use more precise subcategories in order to more
accurately describe the style attribute. To this end, Cluts teaches the use of playlist-
specific style tables:

> The present invention allows playlist-specific style tables to be loaded into
> the system with each playlist. Therefore, playlist publishers may elect to
> use the default style tables, or may provide their own. Each playlist-
> specific style table may reclassify all of the artists whose music appears on
> the system, or only artists of particular interest. Thus, in the previous rap
> music example, a publisher of a rap music playlist may provide a style
> table that reclassifies those artists whose music appears in the rap playlist.
> In other words, a playlist publisher can recategorize the artists that are
> important to that publisher, and for which they want to make finer
> distinctions.[11]

Thus, Cluts teaches the use of playlist-specific style tables which allows a
playlist publisher to create additional, more nuanced values for the style attribute.
The playlist publisher may then re-categorize the style attribute for certain artists
to more closely reflect those artists' musical styles, presumably with appropriate
weights. In addition, Cluts specifically teaches that the playlist specific style table
is an alternative to the default table. Thus, while the style attribute table may
contain additional categories or values for the style, Cluts' subcategories –
implemented through the use of playlist specific style tables -- merely provide a
mechanism by which a publisher can introduce additional values for the single,
style attribute.

Finally, the Office Action points to the Cluts' "style EQ" slider as
disclosing multiple attributes. Again, however, this contention is respectfully
traversed. Cluts teaches that the "style EQ" screen has eight (8) indicators or

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[11] Cluts col. 15, lines 56-67 (emphasis added).

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faders. In the case of a playlist containing only rock music, for example, Cluts teaches that the playlist-specific style table might include more nuanced values such as 1970s rock, 1980s rock, 1990s rock, soft rock, and acid rock, with the fader buttons labeled accordingly[12]. As stressed by the Office Action, however, Cluts also teaches that a rap-oriented playlist might have categories such as old school, hip hop, LA school and the like.

This again supports the view that Cluts teaches a single attribute having multiple values, and not multiple attributes. Cluts' single attribute scheme depends on playlist-specific style categories established in a particular playlist. In the rock and rap music examples highlighted by Cluts, the single style attribute does not accommodate the user who would like to listen to both rock and rap music, and more particularly to more limited types of each kind of music. For example, Cluts' single style attribute does not reasonably accommodate a user whose playlist includes both rock and rap, and who at a particular point in time may wish to delineate between 1970's rock and LA rap. And what of a user who would like to listen to classic 1950's country songs contained in his or her playlist?[13]

For at least the foregoing reasons, then, it is respectfully submitted that Cluts does not teach the use of a plurality of attributes within the meaning of claim 1.

The foregoing applies, *mutatis mutandis*, to independent **claim 11**, which requires, among other things, automatically randomly selecting and presenting, without interaction by a user based on the plurality of attributes, audio or video media content whose attribute values meet a criterion for the plurality of attributes.

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[12] Cluts col. 20, lines 33-44 and Figure 8.

[13] The foregoing discussion is presented to illustrate that Cluts uses only a single attribute as applied to rock, rap, and/or country music. It should not be construed as requiring the selection of any particular attribute or combination of attributes, or that the claimed invention relate specifically to any content or functionality except as defined by the claims.

Independent **claim 14** is directed to a system for browsing a collection of information units. The system includes, *inter alia*:

- Attribute means for associating information units with an attribute value of a plurality of attributes and with at least one mutually independent attribute value.

- Random selection means for randomly selecting at least one information unit based said plurality of attributes and sending said at least one information unit to a presentation means for playing the at least one information unit.

- User-operable hold means for holding an attribute value of a currently selected unit as a criterion for subsequent selections where holding the mutually independent value will not affect a state of another attribute value.

Turning first to the attribute means, the discussion above regarding Cluts' use of a single attribute value applies *mutatis mutandis* to claim 14. As will also be appreciated, Cluts also fails to teach means for associating information units with at least one mutually independent attribute value.

Turning now to the random selection means, the Office Action cites again to Cluts col. 18, lines 51-54 as teaching random selection means for randomly selecting at least one information unit. The Office Action also cites to Cluts col. 4, lines 38-54 as disclosing sending the at least one information unit to a presentation means for playing.

As discussed above in connection with claim 1, however, the random selection process of Cluts relied upon by the Office Action is used to present the user with a list of randomly sorted songs for possible inclusion in a playlist. As taught by Cluts, only those songs which are accepted by the user are added to the playlist. As will be appreciated, however, the addition of the songs to the playlist -- which requires the user's explicit approval -- is anything but random. Moreover, the songs approved by the user are sent to a playlist, not to a presentation means for playing. Thus, Cluts fails to disclose random selection means for selecting at least one information unit . . . and sending the at least one

information unit to a presentation means for playing the at least one attribute as required by claim 14.

Regarding the user-operable hold means, the Office Action cites to Cluts' use of a seed song to select subsequent songs through the use of the 'more like' function, Cluts' use of multiple category and weight values for the style attribute, and Cluts' disclosure that an artist and title information is also associated with songs.[14]

As will be appreciated, however, Cluts 'more like' function merely allows the user to select songs which are more (or less) like the style of a particular artist. Again going back to the Beatles example, the user may search out music which has a style value – again, a single attribute -- more (or less) like "a lot like 1960's and 1970's, sort of like rock and pop, innovators but maybe a little less so, with a tiny bit of British invasion thrown in."

Claim 14, however, requires that the hold means hold an attribute value of a currently selected unit as a criterion for subsequent selections. Holding such a mutually independent attribute value does not affect a state of another attribute value. Applying the Beatles case to the invention of claim 14, for example, the Beatles might be assigned to a genre attribute called "rock" and to a mutually independent style attribute which includes values such as 1960's rock, 1970's rock, British Invasion, Innovators, etc.

Consequently, a user who is listening to the Beatles and employing the invention of claim 14 might elect to hold the genre value "rock" as the criterion for subsequent selections. As the style and genre attributes are independent, it is possible to select subsequent songs by reference to the rock genre attribute value, and not by reference to a particular value of the style attribute. The system disclosed by Cluts, on the other hand, constrains the user to songs which are more

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[14] Office Action at Pages 8 and 9.

or less like a single, style attribute – one which in the exemplary case corresponds to the Beatles' particular style.[15]

The foregoing discussion of the hold means also applies, *mutatis mutandis*, to dependent **claims 2 and 12**, which stand rejected on similar grounds.

Dependent **claim 3** further requires that the attribute be defined with respect to a first attribute and that the attribute means be adapted to determine a set of values for a further attribute in dependence on said criterion. In this regard, the Office Action cites to the disclosure of a first attribute value "Rock" and the set of valid attribute values of a further attribute "1970s Rock," etc. at Cluts col. 20, lines 33-44 and col. 21, lines 57-62.

However, the cited portion of Cluts merely teaches that the various EQ buttons 1115 are labeled according to the style values contained in a playlist containing only rock music, not that the attribute means determine the set of values for a further attribute based on a criterion of an information unit presented by playback as required by claim 3.

Dependent **claim 15**, which depends from claim 14, further requires that the random selection means selects and sends the at least one information unit to a presentation means for playing without interaction by a user. To support the rejection, the Office Action again states that Cluts' teaches selection of a seed song from which the system automatically and without user intervention selects a song that is similar.[16]

As more fully discussed above in connection with claim 1, however, Cluts teaches that randomly sorted songs are sent to a playlist, and only then after the user has explicitly accepted them. Claim 15, on the other hand, requires that the

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[15] The foregoing discussion is presented to illustrate that Cluts does not teach the required hold means. It should not be construed as requiring the selection of any particular attribute or combination of attributes, or that the claimed invention relate specifically to any content or functionality except as defined by the claims.
[16] Office action at Page 11.

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information unit(s) be sent to a presentation means for playing, without interaction by a user.

Dependent **claim 16** requires that the system include a user operable hold means. In this regard, the Examiner's attention is respectfully directed to the relevant discussion above in connection with claims 1, 2, and 12, which applies *mutatis mutandis* to claim 16.

It is further submitted that dependent claims not specifically addressed above are allowable at least by virtue of their respective base claims.

New Claim 21

Independent **claim 21** has also been added. The claim requires, *inter alia*:

- Attribute means for associating a respective one of said information units with an attribute value for a plurality of attributes.

- Random selection means for automatically randomly selecting a unit whose attribute value meets a criterion and sending the selected unit for playback by a playback device.

- The selection and sending is made without interaction by a user based on the plurality of attributes.

The discussion above regarding claim 1 likewise applies, *mutatis mutandis*, to new claim 21. It should be noted that claim 21 requires that the sending of the selected unit for *playback* by the playback device be performed without interaction by the user. In contrast, and as discussed more fully above, Cluts adds the songs to a *playlist*, and then only after the songs have been explicitly accepted by the user.

35 USC 103 Rejection of Claims 6-8 and 17-20

Claims 6-8 and 17-20 stand rejected as obvious over Cluts as applied to claims 1-5, 9, and 11-16 and further in view of Dunning.

Claim 6, which depends from claim 1, requires that the system includes a user operable skip means which aborts the presentation of the currently selected

unit and to a skip to a randomly selected alternative unit. **Claim 17,** which depends from claim 14, is similar. Claims 7, 8, and 19, 20 depend further from claims 6 and 17, respectively.

The Office Action concedes that Cluts does not teach the required skip means and cites Dunning to remedy the deficiency. It is respectfully submitted, however, that the Office Action fails to establish a *prima facie* case of obviousness because

- there is no suggestion or motivation to combine the references in the manner suggested by the Office Action;
- the combined references to not teach or suggest all of the claim limitations.

To establish a *prima facie* case of obviousness, there must be some suggestion or motivation in the references themselves or in the knowledge generally available to one of ordinary skill of the art to modify the reference or to combine reference teachings. The teaching or suggestion to make the claimed combination must be found in the prior art, and not based on applicant's disclosure.[17] The combined references must also teach or suggest all of the limitations of the claims at issue.[18]

As applied by the Office Action and discussed more fully above in connection with claim 1, Cluts discloses a system in which certain randomly sorted songs are listed by title and artist. Such a listing is depicted in Cluts Figure 8, which is again reproduced for convenience below:

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[17] MPEP 2142, *citing In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).
[18] MPEP 2143.03.

FIG. 8
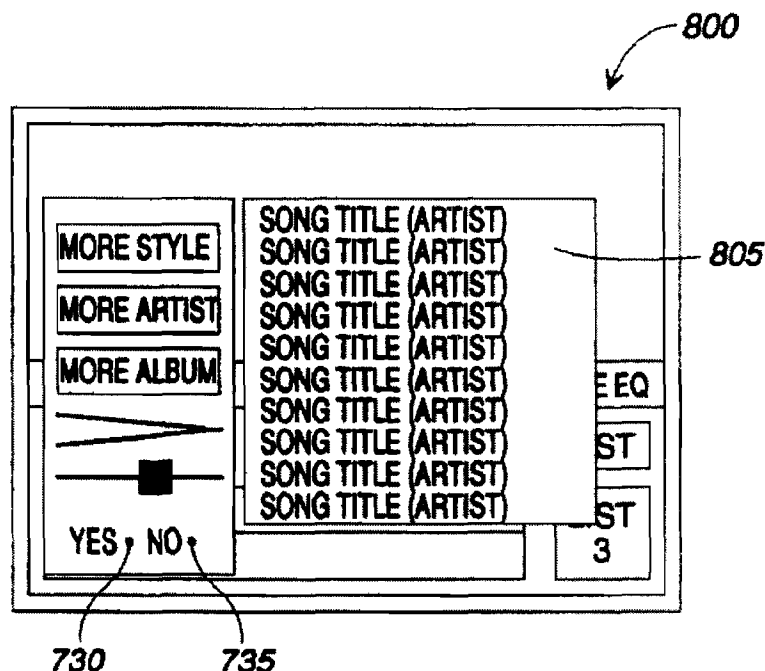
According to Cluts, the user may accept the songs by pressing the "Yes" button. If so accepted, the songs are added to the playlist.

As alleged by the Office Action, Dunning discloses a skip function which aborts the presentation of a currently selected unit and skips to a randomly selected alternative unit. The Office Action further asserts that the motivation for the combination is that the user may not enjoy the song being presented.

Assuming, *arguendo*, the above characterization of Dunning is accurate, there is no suggestion or motivation to combine the references as suggested by the Office Action. More particularly, Cluts lists the identified songs in tabular form for acceptance by the user, with the accepted songs being added to a playlist. To again use the exemplary case of the Beatles, Cluts might present a list of songs which includes *Penny Lane* by the Beatles. Depending on the user's preferences, he or she may press the "Yes" button, in which the list of songs is added to the playlist, or the "No" button, in which case it is not.

As characterized by the Office Action, Dunning teaches that the user may abort the song during *playback* and skip to a random, new song, again for playback. Thus, for

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example, the listener may be listening to *Penny Lane*. If the user decides that he or she doesn't like the song well enough to spend the next three minutes and three seconds[19] of his or her life listening to it, the user may press the skip the song, in which case a new song is played.
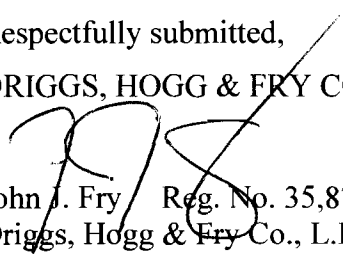
As will be appreciated, it would make little or no sense to apply Dunning's playback skip function to Cluts' tabular list of songs as suggested by the office action.

It should also be noted that, even if so combined, the combination of Cluts and Dunning also fails to teach or suggest all of the limitation of claim 6-8 and 17-20 for at least the reasons discussed above in connection with their respective base claims.

Conclusion

For at least the reasons set forth above, it is submitted that claims 1-15 and 17-20 distinguish patentably and non-obviously over the prior art of record. An early indication of allowability is earnestly solicited.

Respectfully submitted,

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[19] The length of *Penny Lane*, according to Wikipedia.

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